

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
Plaintiffs,)	Civil Action No. 08-571
v.)	
)	Judge Gary L. Lancaster
164.52 ACRES OF LAND, MORE OR LESS,)	
ETC., ET AL.,)	<i>Electronic Filing</i>
Defendants)	

STIPULATED JUDGMENT OF JUST COMPENSATION, AMENDMENT OF
DECLARATION OF TAKING AND ORDER OF DISTRIBUTION

Plaintiff, the United States of America, and defendant, Pine Oaks Land Development, Inc. ("Pine Oaks"), owner of the land condemned, having agreed to amend the Declaration of Taking filed on April 25, 2008, and having agreed upon the amount of just compensation due for the taking of a portion of Pine Oaks' property in this federal condemnation action, as described herein, and the Court being fully advised in the premises,

FINDS that these proceedings have been conducted according to law, and that this Court has jurisdiction of the parties and the subject matter.

1. On April 25, 2008, plaintiff, the United States of America, filed its Complaint in Condemnation together with a Declaration of Taking and estimated just compensation in the amount of \$240,100.00 (two hundred forty one thousand and 00/100 dollars). The Declaration of Taking acquired an eleven (11) year leasehold interest in 164.52 acres of property owned by Pine Oaks, for a period beginning May 4, 2008 and ending December 31, 2019.

2. The public use for which the property subject to this judgment is taken is authorized by law, and that said tract of land and acquisition thereof is necessary for said public use.

3. This case is within the jurisdiction of the United States District Court for the Western District of Pennsylvania, which has the power and authority to enter judgment.

4. On the date of filing of the Declaration of Taking and Complaint in Condemnation, the plaintiff, United States of America, acquired estates and interests in Tract No. 3400E-1, which are set forth with particularity in said Declaration and Complaint.

5. The parties have agreed to the following amendments to the Declaration of Taking:

a. Amended Schedule "B," attached as Attachment 1, the description of the land to be taken, shall be substituted for Schedule "B" of the Declaration of Taking. The total acreage to be acquired is increased to 182.93 acres and hereinafter is referred to as Tract No. 3400.

b. Amended Schedule "C," attached as Attachment 2, the estate taken in the land, shall be substituted for Schedule "C" of the Declaration of Taking. The estate taken shall be fee simple title to Tract No. 3400, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines, excepting and excluding from the taking all underlying minerals and oil and gas in and under said land and all appurtenant rights for the exploration, development, production and removal of said minerals and oil and gas, but without the right to enter upon or over the surface of said land for the purpose of drilling or extracting therefrom said minerals and oil and gas.

c. Amended Schedule "D," attached as Attachment 3, a plan (map) showing the land taken, shall be substituted for Schedule "D" of the Declaration of Taking.

6. All parties that may have had an interest in said property were made parties to this action and were duly served and given proper notice of all proceedings according to law.

7. All appropriate taxing authorities, as listed on Schedule "E" attached to the Declaration of Taking, have been served with notice of the condemnation. No taxing authority, however, has submitted a claim for taxes or liens due and owing on the subject tract.

8. At the time of taking defendant, Pine Oaks, was the fee owner of Tract No. 3400.

THEREFORE IT IS ORDERED AND ADJUDGED, that:

1. The original Schedule "B" of the Declaration of Taking filed with the Court on or about April 25, 2008, is hereby amended and substituted by the Amended Schedule "B" attached as Attachment 1.

2. The original Schedule "C" of the Declaration of Taking filed with the Court on or about April 25, 2008, is hereby amended and substituted by the Amended Schedule "C" attached as Attachment 2.

3. The original Schedule "D" of the Declaration of Taking filed with the Court on or about April 25, 2008, is hereby amended and substituted by the Amended Schedule "D" attached as Attachment 3.

4. The above amendment of the Declaration of Taking is effective as of the date of the original Declaration of Taking, April 25, 2008. Title to the property taken pursuant to the Declaration of Taking, as amended, is hereby vested in the United States of America.

5. Pine Oaks is hereby ordered to deliver to the United States of America a quitclaim deed for all rights, title and interest that Pine Oaks has in the Baird Trestle Bridge AKA Middle Monongahela Industrial Development Association, Inc. Bridge ("MMIDA Bridge") located near the northwest side of Tract No. 3400. This same bridge is subject to an easement through December 31, 2019, pursuant to the judgment filed November 5, 2007, in United States v. 1.71 Acres of Land, Civil Action No. 01-1500.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The sum of \$800,000.00 (eight hundred thousand dollars and 00/100), is the full and just compensation for the taking of the estates and interests specified in the Declaration of Taking, as amended, and that all liens, claims, encumbrances, interest and demands of every nature whatsoever existing at the time of said taking and vesting of the interests in the United States of America are hereby transferred from the land and that any and all awards of just compensation

that may be made in this proceeding as to the property taken as amended by the Department of Justice on behalf of the United States of America shall be payable and deductible from the sum of \$800,000.00 (eight hundred thousand dollars and 00/100), as agreed to by the undersigned parties.

2. That Pine Oaks is hereby granted an option to remove slag from the 182.93 acres referred to as Tract No. 3400, acquired by the United States of America, at the sole expense and responsibility of Pine Oaks including but not limited to securing federal, state and local permits, environmental compliance, site development, site restoration, erosion and sediment control and access. This option to remove the slag does not mature and may not be exercised until the United States Army Corps of Engineers completes the specific actions for which this acreage was acquired and submits a "Notice of Termination" to the Pennsylvania Department of Environmental Protection for the National Pollution Discharge Elimination System Permit No. PA0218791, issued May 26, 2004, Part I and all subsequent renewals. This option will last for ten (10) years from the conclusion of activities on Tract No. 3400 as determined by the Notice of Termination.

a. Pine Oaks shall submit verification of compliance with federal, state and local laws and regulations prior to removal of slag from Tract No. 3400 and shall submit a final site restoration plan to the Government for approval.

3. Pine Oaks hereby agrees to indemnify and hold harmless the United States of America from any and all injury that may be caused by the removal of the slag or related activities from Tract No. 3400.

4. The said just compensation shall be full and complete satisfaction of any and all claims of whatsoever nature against the United States of America by reason of the institution and prosecution of this action and the taking of the said lands and all appurtenances thereunto belonging.

FURTHER:

5. It appearing that the sum of \$240,100.00 (two hundred and forty thousand, one hundred dollars and 00/100) was deposited into the Registry of the Court at the time of filing of the Declaration of Taking, there is a deficiency of \$559,900.00 (five hundred fifty nine thousand nine hundred and 00/100).

6. The former owner warrants that it has the exclusive right to the compensation herein, excepting the interests of parties having liens or encumbrances of record and unpaid taxes and assessments, if any, and that no other party is entitled to the same or any part thereof by reason of any unrecorded agreement.

7. Judgment is hereby entered against plaintiff, the United States of America, in the aforesaid amount.

8. The United States of America shall promptly deposit into the Registry of the Court the deficiency, i.e. the sum of \$559,900.00 (five hundred fifty nine thousand nine hundred and 00/100). The Clerk of the Court shall promptly, without further order of the Court, distribute the deposited sum of \$800,000.00 (eight hundred thousand dollars and 00/100), together with any interest accrued thereon while in the Registry of the Court, to Pine Oaks, through its attorney of record, Peter J. Daley, Esquire, 242 Wood Street, California, Pennsylvania 15419.

ENTERED this 27th day of Feb, 2009.


UNITED STATES DISTRICT JUDGE

Stipulated to:

UNITED STATES OF AMERICA
MARY BETH BUCHANAN, PC
United States Attorney



JESSICA LIEBER SMOLAR
Assistant United States Attorney
Western District of Pennsylvania
U.S. Post Office & Courthouse
700 Grant Street, Suite 4000
Pittsburgh, Pennsylvania 15219
PA I.D. No. 65406

Counsel for Plaintiff, United States

Dated: Feb. 27, 2009

PETER J. DALEY & ASSOCIATES,



PETER J. DALEY, ESQUIRE
242 Wood Street
California, Pennsylvania 15419
PA ID. No. 70244
Counsel for Defendant, Pine Oaks Land
Development, Inc.

Dated: 2/23, 2009